

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 19-86:

LOLO EDUCATION ASSOCIATION,
MEA,

Complainant,

vs.

MISSOULA COUNTY SCHOOL
DISTRICT NO. 7,

Defendant.

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND
RECOMMENDED ORDER

* * * * *

On September 4, 1986, the Complainant filed an unfair labor practice charge with this Board alleging the Defendant had violated Section 39-31-401(1) and (2), MCA. Specifically, the Complainant charges that Lolo Education Association President Jean Belangie-Nye was required by the School District to attend a Missoula County School District No. 7 board meeting on August 7, 1986; that upon attending that meeting she was subjected to strenuous questioning about her answers given during an interview with the news media; and that requiring her to attend the meeting, the subsequent interrogation, and the manner of the interrogation, violated the spirit of protection granted public employees.

The Defendant denied the charges, filed its answer on September 26, 1986, and requested the unfair labor practice be dismissed on the grounds there were insufficient facts to constitute an unfair labor practice.

This Board conducted an investigation in this matter and issued an Investigation Report and Determination on October 17, 1986. The Report found probable merit for the charge and concluded that a formal hearing in the matter was appropriate.

1 A formal hearing in this matter was conducted
2 January 23, 1987, in the Middle School, Lolo, Montana. The
3 formal hearing was conducted under authority of Section
4 39-31-406 MCA, pursuant to ARM 24.26.682, and in accordance
5 with the Administrative Procedure Act (Title 2, Chapter 4,
6 MCA). The purpose of the formal hearing was to determine
7 whether the Defendant violated Sections 39-31-401(1) and (2)
8 MCA. The Hearing Examiner was Stan Gerke.

9 Emilio Loring, Attorney at Law, Great Falls, Montana,
10 represented the Complainant. Chadwick H. Smith, Attorney at
11 Law, Helena, Montana, represented the Defendant.

12 ISSUE

13 Whether or not requiring the union president to attend
14 a mid-summer School Board meeting to discuss her contacts,
15 on behalf of her membership, with the media about a matter
16 of union and public concern, the school budget, violates
17 Sections 39-31-401(1) and (2) MCA in that it is interference
18 with employees in the exercise of rights guaranteed in
19 Section 39-31-201 MCA and interference in the administration
20 of a labor organization.

21 STIPULATED FACT

22 1. The Claimant, Lolo Education Association, MEA
23 (hereinafter the "LEA") is the duly recognized exclusive
24 representative of the collective bargaining unit of which
25 Jean Belangie-Nye is a member.

26 2. The Defendant, Missoula County School District No.
27 7 (hereinafter the "District") operates the public elementa-
28 ry school in Lolo, Montana.

29 3. At all times relevant hereto Jean Belangie-Nye has
30 been the president of the LEA.
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1 4. In the spring of 1986, the individual teaching
2 contracts of seventeen nontenured teachers were not renewed
3 by the District. On July 28, 1986, the District rehired ten
4 of the seventeen nontenured teachers.

5 FINDINGS OF FACT

6 After a thorough review of the record, including the
7 testimony of witnesses, the exhibits, and the post-hearing
8 briefs, I make the following:

9 5. President Belangie-Nye did not attend the July 28,
10 1986, school board meeting at which the District did not
11 rehire seven of the seventeen nontenured teachers and, as
12 required by state law, adopted the final school District
13 budget for the ensuing year. Teachers (LEA members) attend-
14 ing the July 28, 1986, school board meeting informed Presi-
15 dent Belangie-Nye of the District's action.

16 6. President Belangie-Nye contacted the news media in
17 the Missoula area to express the LEA's concerns of the
18 non-hiring of seven teachers and the school budget. Presi-
19 dent Belangie-Nye was interviewed by one television reporter
20 and a tape of the interview, including the comments of
21 teacher staffing and budget concerns, was broadcast on a
22 Missoula TV station.

23 7. Following the TV interview broadcast, the Dis-
24 trict, by registered letter dated August 1, 1986, and signed
25 by Richard M. Heath, Superintendent, and Douglas S. Madnot,
26 Chairman, Lolo School Board of Trustees, informed President
27 Belangie-Nye that she was required to attend the school
28 board meeting of August 7, 1986, regarding her concerns of
29 the school budget. President Belangie-Nye had never previ-
30 ously been invited, requested or required to attend a school
31 board meeting in such a fashion.

1 8. By letter dated August 5, 1986, addressed to
2 Superintendent Heath, President Belangie-Nye requested a
3 written response to the following questions regarding the
4 letter requiring her to attend the August 7, 1986, school
5 board meeting:

6 a) Is this a directive?

7 b) What is the purpose of my attending the board
8 meeting?

9 c) What do you expect me to present?

10 President Belangie-Nye never received a written response to
11 her letter.

12 9. The August 7, 1986, school board meeting agenda
13 prepared by the District notes: III. New Business, C. Jean
14 Belangie-Nye - Press Statement. The agenda also notes there
15 will be "discussion" and "possible action" on the subject.

16 10. President Belangie-Nye did attend the school board
17 meeting of August 7, 1986. Chairman Hadnot chaired the
18 meeting. When the business of the meeting reached the
19 agenda item regarding President Belangie-Nye, Chairman
20 Hadnot prepared to show the video tape of President
21 Belangie-Nye's TV interview. The District had secured a
22 copy of the TV news tape. Prior to it's playing, President
23 Belangie-Nye verbally asked Chairman Hadnot to respond to
24 her August 5, 1986 letter. Chairman Hadnot entered her
25 request on the record of the school board meeting and then
26 gave instructions to play the video tape. Following the
27 playing of the tape, President Belangie-Nye gave a presenta-
28 tion regarding the LEA's concerns on teacher staffing and
29 the budget and verbal exchanges occurred between President
30 Belangie-Nye and Chairman Hadnot.

31 11. President Belangie-Nye testified that she believed
32 her required attendance at the August 7, 1986 school board

1 meeting was a reprimand for contacting the news media. She
2 testified that she was intimidated and threatened by Chair-
3 man Hadnot and she clearly understood she was not to talk
4 with the news media in the future. Several witnesses
5 supported Belangie-Nye's testimony.

6 12. Chairman Hadnot testified that the real reason for
7 President Belangie-Nye's presence at the August 7, 1986
8 school board meeting was to provide comments concerning the
9 school budget. Chairman Hadnot testified that during the
10 school board meeting President Belangie-Nye was intimidat-
11 ing, argumentative, hostile and rude. Several witnesses
12 supported Chairman Hadnot's testimony.

13 13. The following are verbal exchanges that occurred
14 between Chairman Hadnot and President Belangie-Nye at the
15 August 7, 1986 School Board meeting taken from the tape
16 recording from that meeting (Joint Exhibit #5):

17 HADNOT: Item C, ah, in regards. Um, basically,
18 Um, television news interview here. I
wonder, I could ask John to run that for
us.

19 NYE: Before you do...

20 HADNOT: Um hum...

21 NYE: I sent a letter to Dick [Richard M.
Beath, Superintendent] in registered
mail...

22 HADNOT: Um hum...

23 NYE: ...requesting a written response. There
were three requests in it. No. 1, was
24 this a directive that I be here; No. 2,
what is the purpose of this; and No. 3,
25 what am I to present. I requested that
in writing and I asked Dick this
26 morning, when he called me, if he would
have something to that effect in writ-
ing.

27 HADNOT: Well, um, I stopped by the school last
night to visit with Mr. Beath on my way
28 home from work and I watched him open
the letter last night in his office
here.

29 NYE: Um hum...

30 HADNOT: So there really was not time for any
written response to that. Therefore, he
31 I did make a telephone call to you
today.

32 NYE: Right.

1 HADNOT: Let's go ahead with this since you're
here...
2 NYE: ...I would like a...
HADNOT: ...AND SO...
3 NYE: ...I would like a written response to my
letter. I want that on the record.
4 HADNOT: Okay. Let the record show that Jean has
asked for a written response to her
5 letter. John, would you like to run
that for us, please.
6

7 (The news video tape was played.)

8 HADNOT: Well, Jean, since you were not at our
final budget hearing...(pause because of
9 video machine noise)...since you were
not at our final budget hearing you seem
10 to have quite a bit to say about this. I
wanted to give you the opportunity to
11 tell the board the record.
NYE: Ok, I have no problems with that what-
12 soever. Alice [fellow teacher] has
several handouts. I was not at the
13 final budget hearing, however, like
anyone in this room any of you can go
14 and pick up a copy of the preliminary
budget at the County Superintendent's
15 Office. We came out here, we picked up
copies of the budget also. Ah, one of
16 our very serious concerns is that, first
of all, the 17 nontenured teachers were
17 not rehired in May....

18 (Major portion of Nye's presentation
omitted.)

19 In closing in terms of it I can't see
20 that a \$5,600 difference is a financial
need in terms of rehiring. We also have
21 some questions that we would like to ask
the board in terms of the hiring and
rehiring....

22 HADNOT: ...Um....

23 NYE: ...And I have a statement that I would
like to read.

24 HADNOT: Well, I'd like to address your state-
ments that you make to the press under
25 this particular agenda item. If you
have a statement from the LEA it really
26 should have been presented in communica-
tions under the reports that we asked
for. Ah, Jean...

27 NYE: ...This is not a statement....

28 HADNOT: ...in your comments to the press there
you said that they should have been
29 given warning about losing jobs.

NYE: Yes.

30 HADNOT: And were those people given warning at
sometime earlier this year or not?

31 NYE: They were give a termination notice
saying that depending on funding cuts
32 they would not be rehired. Now...

1 HADNOT: ...And when was that given?
 NYE: That was given on April 15th.
 2 HADNOT: Okay...
 NYE: ...However...
 3 HADNOT: ...Thank you...
 NYE: ...No...
 4 HADNOT: That's the end of my question...
 NYE: ...I have a comment. I think...
 5 HADNOT: ...I don't think I'm going to entertain
 your comment.
 6 NYE: Fine.
 HADNOT: Okay. You said that you, I know there's
 7 money in that budget, and the figures
 that I have indicated, ah, that we have
 8 budgeted minimal amounts were adequate
 to minimal amounts in every area. And
 9 there is no padding in this budget
 whatsoever. Now, we come out with
 10 \$627,000 to spend on regular teacher's
 salaries.
 11 NYE: Okay...
 HADNOT: ...And, if we had taken into account the
 12 approximate 9% increase in teacher's
 salaries that is granted by the negoti-
 13 ated agreement, where do you propose...
 NYE:9%?....
 14 HADNOT: ...that we find some other money in this
 budget to teach on.
 15 NYE: It was 3.5%
 HADNOT: No, I think it's 9%...
 16 NYE: ...Oh, I'm sorry Mr. Hadnot I negotiated
 that agreement. It was negotiated
 17 fairly. It was a total 8% increase over
 two years. Three point five percent
 18 this year.
 HADNOT: Jean, the figures that I have show that,
 19 ah...
 NYE: ...Your figures are wrong.
 20 HADNOT: Oh, okay. Well, then we won't enter
 this one...
 21 NYE: ...3.5% increase...
 HADNOT: That's fine. It's about \$60,000 or
 22 \$70,000. Is that correct?
 NYE: That might be possible. I don't know,
 23 I haven't looked at the the negoti-
 ated...
 24 HADNOT: ...It's over 40 say, if it were \$60,000
 and you're talking about \$680,000 for
 25 teacher's salaries. What percentage is
 that?
 26 NYE: Well, I figured it out...
 HADNOT: ...About 10% isn't it.
 27 NYE: Actually, I figured it out on my calcu-
 28 lator today and they are listed at the
 bottom of my statement. Okay.
 HADNOT: Okay.
 29 NYE: Furthermore.
 (INAUDIBLE)
 30 HADNOT: You still haven't answered my question
 31 in terms of where else in the budget.
 Where would you take money out of one
 32

1 line in the budget and put it into
2 teacher's salaries?
3 NYE: Well, first of all when a teacher says
4 she's not returning. No. 1. No. 2, why
5 don't you hire the teacher that is 91
6
7 HADNOT: NO.
8 NYE: ...dollars more...(INAUDIBLE)...
9 HADNOT: ...That is not the answer to my ques-
10 tion. I want to know where are we going
11 to find dollars somewhere else in the
12 budget to move them up into the
13 teacher's salaries?
14 NYE: Okay, under preliminary budget you had a
15 figure of \$7,790 under supplies. On
16 your final budget you had one of
17 \$17,790. You added \$10,000 into the
18 general administration supplies which is
19 the building principle area. There is
20 \$10,000 right there.
21 HADNOT: Okay.
22 NYE: I have a question about that. We had
23 under instruction your supplies went
24 from \$7,000 to \$28,000.
25 HADNOT: Um hum.
26 NYE: That seems to be an addition of \$21,000.
27 Next question, \$30,000 under "other"
28 under administrative. You don't know
29 what that's being used for. A lot of
30 stuff got put in supplies. We
31 understand that there's a certain amount
32 of padding. We are also very aware that
33 \$28,000 was transferred out of teacher's
34 salaries last year.
35 HADNOT: Jean, my basic question is, why, when we
36 had three members of the staff on a
37 budget review committee that met in two
38 pretty long meetings and we had some
39 pretty good exchanges. Why didn't we
40 hear that then? And why did you have to
41 go outside? Why can't you come to us
42 and talk to us?
43 NYE: ...I don't feel I should have to answer
44 that?
45 HADNOT: ...Well, I'm asking you. I want to know
46 why did you choose...
47 NYE: ...You're the one...
48 HADNOT: ...to take this in an arena where it
49 does not belong?
50 NYE: What do you mean, take it in an arena
51 where it does not belong?
52 HADNOT: The arena for discussing the budget is
53 in this place where the budget is
54 determined...
55 NYE: ...Yes, yes...but...
56 HADNOT: ...and we had a meeting and a time to do
57 that...
58 NYE: Oh, but Doctor Hadnot, Yes, we had an
59 arena. Yes, there were staff members
60 invited. And, yes, you cut 7 positions.
61 We have serious questions about four of
62 the positions...

1 HADNOT: ...You are not answering my question,
2 JEAN: ...About the positions you cut...
3 HADNOT: ...I want to know why you didn't come
4 and discuss it with us at the proper
5 time.
6 NYE: Because my understanding was that the
7 curriculum or the budget committee was
8 made up of Jan, Bobbie, and Bill. They
9 had the information. They presented it
10 to you. They have comments. Maybe they
11 can answer those questions...
12 HADNOT: ...Okay...
13 NYE: ...I wasn't there.
14 HADNOT: Well, the final budget was adopted in an
15 open public meeting in this room last
16 A week ago Monday.
17 NYE: That's right and that's when you also
18 cut 7 teachers for which that shouldn't
19 have been cut...
20 HADNOT: ...Why didn't we hear these comments
21 then?
22 NYE: Because I didn't think you would have
23 listened then either.
24 HADNOT: Hum, that's interesting. Well, does any
25 other board members have question or
26 comments for Jean?...
27 (Comments occurred from at least one School Board
28 member)
29 HADNOT: I think the bottom line here, and the
30 point, that I'm trying to make and it's
31 directed at you Jean,...
32 NYE: Um hum...
33 HADNOT: ...is that if we're ever going to get
34 Lolo School to work together for the
35 better education of all our children
36 we're going to have to get together and
37 talk about it in a forum where we can
38 accomplish something.
39 NYE: Um hum.
40 HADNOT: And the kind of committee that was
41 formed was staff members and community
42 members and board members and adminis-
43 tration and a clerk was just the kind of
44 a forum to accomplish that. And there
45 were a lot of ideas exchanged and lot of
46 the ideas that came from the staff were
47 incorporated into the budget and that's
48 the place to do it. But if we have
49 people going outside and stirring the
50 pot and making problems it tears things
51 apart that much further. It's unneces-
52 sary and I would ask everybody in this
53 room if you care for Lolo School and you
54 care for the kids please help us bring
55 it together. Come and work with us. We
56 want to do that. I'm going to call a
57 recess for fifteen minutes and we will
58 (INAUDIBLE).

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DISCUSSION

The factual situation is clear. In the spring of 1986, the District did not renew the individual teaching contracts of seventeen nontenured teachers. During the final adoption of the 1986-87 school budget conducted at a special meeting of the school board on July 28, 1986, only ten of the seventeen nontenured teachers were rehired. These actions by the District were of grave concern of the LEA.

The President of the LEA, Jean Belangie-Nye, took the LEA's concerns to the news media. A local TV station interviewed President Belangie-Nye and broadcast the video tape of that interview.

One or two days following the broadcast of the interview, the District, by registered letter, informed President Belangie-Nye that she was required to attend the August 7, 1986 school board meeting. Conflicting testimony was given concerning the tone of the August 7, 1986, school board meeting and the demeanor of President Belangie-Nye and Chairman Hadnot. The best evidence regarding the August 7th meeting is Joint Exhibit #5 - the tape recording of the school board meeting (note dialogue between President Belangie-Nye and Chairman Hadnot in Findings of Fact No. 13).

The preponderance of the evidence persuades me to conclude that the District's purpose of requiring President Belangie-Nye attendance at the August 7th school board meeting was to question her action of giving a statement to the media and to discourage further press statements. I am not persuaded by Defendant's argument that President Belangie-Nye was invited to attend the meeting for the sole

1 reason to share her budget concerns. I thoroughly consid-
2 ered the following facts in my conclusion:

- 3 a) President Belangie-Nye was required to attend
4 the August 7th meeting by registered letter.
- 5 b) President Belangie-Nye had never been previ-
6 ously invited, requested or required to
7 attend a school board meeting in such a
8 fashion.
- 9 c) The final budget for the 1986-87 school year
10 was adopted July 28, 1986, at a special
11 meeting of the school board. Formally
12 addressing President Belangie-Nye's budget
13 concerns some ten days after the adoption of
14 the final budget lacks sensibility.
- 15 d) The prepared agenda for the August 7th school
16 board meeting lists "Jean Belangie-Nye -
17 Press Statement" and "discussion and possible
18 action."
- 19 e) The thrust of Chairman Hadnot's questions and
20 comments at the August 7th meeting were
21 concerned with President Belangie-Nye's
22 action of "going to the press" rather than
23 her budget comments.
- 24 f) The playing of the video tape of President
25 Belangie-Nye's press statement at the August
26 7th meeting indicates concern in her contact-
27 ing the news media rather than her budget
28 comments.

19 Complainant LEA charged that Defendant District violat-
20 ed Sections 39-31-401(1) and (2) MCA. Those statutes read
21 as follows:

22 "39-31-401. Unfair labor practices of public
23 employer. It is an unfair labor practice for a
24 public employer to:

25 (1) interfere with, restrain, or coerce employ-
26 ees in the exercise of the rights guaranteed in
27 39-31-201;

28 (2) dominate, interfere, or assist in the
29 formation or administration of any labor organiza-
30 tion; however, subject to rules adopted by the
31 board under 39-31-401, an employer is not prohib-
32 ited from permitting employees to confer with him
during working hours without loss of time or pay;"

33 "39-31-201. Public employees' protected in right
34 of self-organization. Public employees shall have
35 and shall be protected in the exercise of the
36 right of self-organization, to form, join, or
assist any labor organization, to bargain

1 collectively through representatives of their own
2 choosing on questions of wages, hours, fringe
3 benefits, and other conditions of employment, and
4 to engage in other concerted activities for the
purpose of collective bargaining or other mutual
aid or protection free from interference, re-
straint, or coercion."

5 I have already concluded that the District's purpose of
6 requiring President Belangie-Nye to attend the August 7,
7 1986 school board meeting was to question her action of
8 giving a press statement concerning the school budget and
9 staffing and to discourage President Belangie-Nye to give
10 future press statements. To be determined is whether that
11 action by the District constitutes a 401(1) violation in
12 that it has interfered with protected rights afforded
13 employees under the Act. I do not have sufficient facts to
14 address a 401(2) violation.

15 The Montana Supreme Court has approved the practice of
16 the Board of Personnel Appeals in using federal court and
17 NLRB precedents as guidelines in interpreting the Public
18 Employees Collective Bargaining Act. State Department of
19 Highways v. Public Employees Craft Council, 165 Mont. 349,
20 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 2390 v. City
21 of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753
22 (1976); State ex rel. Board of Personnel Appeals v. District
23 Court, 181 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979);
24 Teamsters Local 45 v. State ex rel. Board of Personnel
25 Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981),
26 City of Great Falls v. Young (Young III), ____ Mont. ____,
27 686 P.2d 185, 119 LRRM 2682 (1984).

28 An employer was not justified in discharging six
29 employees for distributing leaflets publicizing a union's
30 dispute with the employer because employees were engaged in
31 protected concerted activity and their conduct did not
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1 constitute disloyalty. NLRB v. National Furniture Mfg. Co.,
2 315 F.2d 280 (7th Cir. 1963), 52 LRRM 2451. Nurses'
3 statements on television news broadcast protesting wages and
4 staffing conditions at a hospital were found to be protected
5 activities despite the employer's contention that remarks
6 were disloyal and disparaging against employer. Roanoke
7 Hospital v. NLRB, 538 F.2d 607, (4th Cir. 1976), 92 LRRM
8 3158. Employees distribution of union newsletter waging
9 opposition of right-to-work statute and criticizing
10 presidential veto of minimum wage increase was found to be
11 protected concerted activity and employer's attempt to bar
12 such distribution was unlawful. Eastex, Inc. v. NLRB, 437
13 U.S. 556, 98 LRRM 2717 (1978). Suspension was held unlawful
14 of two bus drivers for issuing press release announcing
15 intent of bus drivers to strictly obey speed limit over
16 Labor Day weekend; the press release was related to ongoing
17 labor dispute between employees and employer and such
18 communication was protested. NLRB v. Greyhound Lines, Inc.,
19 660 F.2d 354 (8th Cir. 1981), 108 LRRM 2531. In summary,
20 employees' activities which are directed to improve terms
21 and conditions of employment or otherwise improve their lot
22 as employees are protected even though such activities are
23 channeled outside immediate employee-employer relationships.
24 Eastex, Inc. v. NLRB, supra; NLRB v. Washington Aluminum
25 Co., 370 U.S. 9, 50 LRRM 2235 (1962); NLRB v. Electrical
26 Workers (IBEW) Local 1229, 346 U.S. 464, 33 LRRM 2181
27 (1953).

28 As noted earlier, insufficient evidence was produced to
29 show a violation of Section 39-31-401(2) MCA. Violations of
30 401(2) [equivalent to Section 158(a)(2) of the federal
31 statutes] relate to employer domination or interference with
32

1 or support to a "labor organization" as opposed to protected
2 concerted activities of individuals in 401(1) violations.

3 I have found a violation of Section 39-31-401(1) MCA.
4 However, 401(1) (equivalent to Section 150(a)(1) of the
5 federal statutes) "was intended as a general definition of
6 employer's unfair labor practices. Violations of it may be
7 either derivative, independent, or both." Pun Stridars,
8 Inc. v. NLRB, (9th Cir. 1981), 686 F.2d 659, 106 LRRM 3076,
9 Missoula County High School District v. Board of Personnel
10 Appeals, et al., ____ Mont. ____, 727 P.2d 1327, 43 St.
11 Rptr 2808, 5 St.Rptr Ed. L. 200 (1986), sets forth the test
12 to determine whether there was an independent or a deriva-
13 tive violation of Section 39-31-401(1) MCA:

- 14 (1) that employees are engaged in protected
15 activities;
- 16 (2) that the employer's conduct tends to inter-
17 fere with, restrain, or coerce employees "in
18 these activities"; and,
- 19 (3) that the employer's conduct is not justified
20 by a legitimate and substantial business
21 reason.

22 I have determined that President Belangie-Nye was
23 engaged in protected activities and that the District had
24 interfered with those activities. Parts (1) and (2) of the
25 test have been satisfied. The District had argued that
26 President Belangie-Nye was invited to the August 7th school
27 board meeting to show her school budget views. However, the
28 final school budget was adopted at a special meeting of the
29 school board on July 28th. I do not find that requiring
30 President Belangie-Nye to make school budget comments after
31 final adoption of the budget justifies a "legitimate and
32 substantial" business reason. Therefore, there is an
independent violation of Section 39-31-401(1) MCA.

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